

1 JOANNA L. BROOKS (State Bar #182986)
TIMOTHY C. TRAVELSTEAD (State Bar #215260)
2 DOUGLAS M. BRIA (State Bar #226966)
JACKSON LEWIS LLP
3 199 Fremont Street, 10th Floor
San Francisco, CA 94105
4 Telephone 415.394.9400
Facsimile: 415.394.9401

ORIGINAL

5 Attorneys for Defendant
6 PEROT SYSTEMS CORPORATION

7 UNITED STATES DISTRICT COURT
8
9 NORTHERN DISTRICT OF CALIFORNIA

FILED
JUN 25 2008
RICHARD W. WIENING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

10 RAUL MANCERA,

11 Plaintiff,

12 v.

13 PEROT SYSTEMS CORPORATION, and
14 DOES 1 through 25, inclusive,

15 Defendants.

Case No.: CV 08 3064 MHP

**CERTIFICATE OF SERVICE OF
NOTICE TO ADVERSE PARTIES OF
REMOVAL TO FEDERAL COURT**

16
17
18 I, Linda Moore, declare that I am employed with the law firm of Jackson Lewis LLP,
19 whose address is 199 Fremont Street, 10th Floor, San Francisco, California 94105; I am over the
20 age of eighteen (18) years and am not a party to this action.

21 On June 24, 2008, I served the attached document(s):

22 NOTICE TO ADVERSE PARTIES OF REMOVAL TO FEDERAL COURT

23 in this action by placing true and correct copies thereof, enclosed in sealed envelope(s) addressed
24 as follows:

25 Frank A. Jelinch, Esq.
Law Office of Frank A. Jelinch
26 20045 Stevens Creek Boulevard, Suite 2G
Cupertino, CA 95014
27 Telephone: (408) 366-6300
Facsimile: (408) 252-3936
28

- 1 [] BY MAIL: United States Postal Service - by placing sealed envelopes with the postage
2 thereon fully prepaid, placed for collection and mailing on this date, following ordinary
business practices, in the United States mail at San Francisco, California.
- 3 [] BY HAND DELIVERY: I caused such envelope(s) to be delivered by Messenger Service
4 to the above address[es].
- 5 [X] BY OVERNIGHT DELIVERY: I caused such envelope(s) to be delivered to the above
address within 24 hours by OVERNIGHT EXPRESS service.
- 6 [] BY FACSIMILE: I caused such documents to be transmitted by facsimile to the
7 telephone number(s) indicated above.

8 I declare under penalty of perjury under the laws of the United States that the above is true
9 and correct.

10 Executed on June 25, 2008 at San Francisco, California.

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14 LINDA A. MOORE
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Jun 24 2008 9:41PM

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p. 14

1 JOANNA L. BROOKS (State Bar #182986)
 2 TIMOTHY C. TRAVELSTEAD (State Bar #215260)
 3 DOUGLAS M. BRIA (State Bar #226966)
 JACKSON LEWIS LLP
 199 Fremont Street, 10th Floor
 San Francisco, CA 94105
 Telephone 415.394.9400
 Facsimile: 415.394.9401

5 Attorneys for Defendant
 6 PEROT SYSTEMS CORPORATION

FILED
 JUN 24 2008

ALEX CALVO, CLERK
 BY MICHELLE IRIS
 DEPUTY, SANTA CRUZ COUNTY

7
 8 SUPERIOR COURT OF CALIFORNIA
 9 COUNTY OF SANTA CRUZ

10
 11 RAUL MANCERA,

12 Plaintiff,

13 v.

14 PEROT SYSTEMS CORPORATION and
 DOES 1 through 25, inclusive,

15 Defendants.

Case No. CV160155

BY FAX

**NOTICE TO ADVERSE PARTIES OF
 REMOVAL TO FEDERAL COURT**

Complaint Filed: April 29, 2008
 Trial Date: None Set

16
 17 **TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:**

18 PLEASE TAKE NOTE THAT a Notice of Removal of this action was filed in the United
 19 States District Court for the Northern District of California on June 24, 2008. A copy of said
 20 Notice of Removal is attached to this Notice, and is served and filed herewith.
 21

22 Dated: June 24, 2008

JACKSON LEWIS LLP

23
 24 By: 

25 JoAnna L. Brooks
 26 Timothy C. Travelstead
 27 Douglas M. Bria
 Attorneys for Defendant
 PEROT SYSTEMS CORPORATION,
 a Delaware Corporation
 28

NOTICE TO ADVERSE PARTIES OF REMOVAL TO FEDERAL COURT

Case No. CV160155

PROOF OF SERVICE

I, Linda A. Moore, declare that I am employed with the law firm of Jackson Lewis LLP, whose address is 199 Fremont Street, 10th Floor, San Francisco, California 94105; I am over the age of eighteen (18) years and am not a party to this action.

On June 24, 2008, I served the attached document(s):

**NOTICE TO ADVERSE PARTIES OF REMOVAL TO
FEDERAL COURT**

in this action by placing true and correct copies thereof, enclosed in sealed envelope(s) addressed as follows:

Frank A. Jelinch, Esq.
Law Office of Frank A. Jelinch
20045 Stevens Creek Boulevard, Suite 2G *Attorney for Plaintiff*
Cupertino, CA 95014
Telephone: (408) 366-6300
Facsimile: (408) 252-3936

☐ BY MAIL: United States Postal Service by placing sealed envelopes with the postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at San Francisco, California.

☐ BY HAND DELIVERY: I caused such envelope(s) to be delivered by Messenger Service to the above address.

☒ BY OVERNIGHT DELIVERY: I caused such envelope(s) to be delivered to the above address within 24 hours by OVERNIGHT EXPRESS service.

☐ BY FACSIMILE: I caused such documents to be transmitted by facsimile to the telephone number(s) indicated above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 24, 2008 at San Francisco, California.


LINDA A. MOORE

JOANNA L. BROOKS (State Bar #182986)
TIMOTHY C. TRAVELSTEAD (State Bar #215260)
DOUGLAS M. BRIA (State Bar #226966)
JACKSON LEWIS LLP
199 Fremont Street, 10th Floor
San Francisco, CA 94105
Telephone 415.394.9400
Facsimile: 415.394.9401
brooks@jacksonlewis.com

Attorneys for Defendant
PEROT SYSTEMS CORPORATION

ORIGINAL
FILED

JUN 24 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

E-filing

MHP

CV 08 Case No.: 3064

RAUL MANCERA,

Plaintiff,

v.

PEROT SYSTEMS CORPORATION, and
DOES 1 through 25, inclusive,

Defendants.

**NOTICE OF REMOVAL OF CIVIL
ACTION TO THE UNITED STATES
DISTRICT COURT FOR THE
NORTHERN DISTRICT OF
CALIFORNIA PURSUANT TO 28
U.S.C. SECTIONS 1332, 1441 AND 1446
[DIVERSITY]**

(Filed in conjunction with Certificate of
Service of Notice to Adverse Parties and
Notice of Pendency of Other Action or
Proceeding)

**TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, PLAINTIFF RAUL MANCERA AND
TO HIS ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE: Defendant Perot Systems Corporation ("Perot
Systems") hereby invokes this Court's jurisdiction under the provisions of 28 U.S.C. sections
1332 and 1441(b) and removes this action from the Superior Court of the State of California for
the County of Santa Cruz to the United States District Court for the Northern District of
California, pursuant to 28 U.S.C. section 1446(b). In support thereof, Defendant asserts:

1. On April 29, 2008, Plaintiff Raul Mancera ("Plaintiff") filed his complaint
in the Superior Court of the State of California, County of Santa Cruz, designated as Case No. CV

1 160155 ("Complaint"). The Complaint alleges the following three (3) causes of action against
2 Perot Systems and Does 1 through 25: (i) failure to pay wages in violation of California Labor
3 Code sections 201, 202, 203 and 226.7; (ii) penalties under California Labor Code section 203
4 and 226.7 for each day that meal and rest periods were not provided and failure to pay all wages
5 owed on termination of employment ("Waiting-Time Penalties"); and (iii) retaliation for
6 complaining about unpaid wages in violation of California Labor Code section 201.

7 2. Plaintiff served Defendant with the Summons and Complaint on May 27,
8 2008.

9 3. This Notice of Removal has been filed within thirty (30) days after
10 Defendant was first served with a copy of Plaintiff's Summons and Complaint and is therefore
11 filed within the time period mandated by 28 U.S.C. section 1446(b).

12 4. The Summons and Complaint, as well as the notices and orders collectively
13 attached as Exhibit "A," constitute all process, pleadings and orders served on Perot Systems in
14 this action pursuant to 28 U.S.C. section 1446(a).

15 5. In accordance with 28 U.S.C. section 1446(d), the undersigned counsel
16 certifies that a copy of this Notice of Removal and all supporting papers promptly will be served
17 on Plaintiff's counsel and filed with the Clerk of the Santa Cruz County Superior Court. True and
18 correct copies of the form of such notices are attached hereto as Exhibits "B" and "C." Therefore,
19 all procedural requirements under 28 U.S.C. section 1446 have been satisfied.

20 6. Venue of this action lies in the United States District Court for the
21 Northern District of California pursuant to 28 U.S.C. sections 1441, *et seq.* and 1391(a) because
22 this is the judicial district of this Court in which the action arose, where Plaintiff resides and
23 where the causes of action arose.

24 **DIVERSITY JURISDICTION**

25 7. Perot Systems properly may remove the Complaint on the basis of
26 diversity of citizenship jurisdiction pursuant to 28 U.S.C. section 1332(a) because:

27 a. Plaintiff now is, and was at the time this action was commenced, a
28 citizen of the State of California within the meaning of 28 U.S.C. section 1332(a). Plaintiff filed

1 his Complaint, an action under California law, in Santa Cruz County, California, which is
 2 Plaintiff's last known address and place of employment.

3 b. Perot Systems now is, and was at the time this action was
 4 commenced, a citizen of the State of Delaware within the meaning of section 1332(c)(1), because
 5 it now is, and was at all times, incorporated under the laws of that state of Delaware.

6 c. Perot Systems also now is, and was at the time this action was
 7 commenced, a citizen of the State of Texas within the meaning of section 1332(c)(1), because
 8 Perot Systems' executive and administrative functions are primarily performed in the State of
 9 Texas and a substantial predominance of its corporate operations do not take place in California
 10 or any other state in which it conducts operations.

11 d. Perot Systems is not now, nor was at the time this action was
 12 commenced, a citizen of the State of California within the meaning of section 1332(c) because it
 13 is not and was not incorporated in California and its principal place of business is not and was not
 14 in California.

15 e. The presence of Doe defendants has no bearing on the diversity
 16 with respect to removal. *See* 28 U.S.C. section 1441(a) ("For purposes of removal under this
 17 Chapter, the citizenship of defendants sued under a fictitious name shall be disregarded.").
 18 Defendant is not aware of any Doe defendant having been served with a copy of the Summons
 19 and Complaint.

20 8. The Court may not decline to exercise jurisdiction over the action pursuant
 21 to 28 U.S.C. sections 1332(d)(3) because Perot Systems is not a citizen of the state in which the
 22 action was filed.

23 AMOUNT IN CONTROVERSY

24 9. Without admitting that Plaintiff could recover any damages, the amount in
 25 controversy in this action exceeds \$75,000 on the following grounds:

26 a. In his first cause of action (non-payment of wages), Plaintiff alleges
 27 that (i) he was required to work during meal and rest periods in violation of Labor Code Section
 28 226.7 over a period of three years, for an approximate amount owed of \$7,823 (Complaint ¶

4(a)); (ii) he was required to work overtime without regular or overtime pay over a period of three years, for an approximate owed of \$53,469 (Complaint ¶ 4(b)); (iii) he was not paid for regular hours worked for 23 days in August 2007, for an approximate amount owed of \$4,204 (Complaint ¶ 4(c)); and (iv) at the time of termination Perot Systems failed to pay Plaintiff wages in violation of Labor Code sections 201, 202, 203, and 226.7, for an approximate amount owed in excess of \$25,000 (Complaint ¶ 5.) Plaintiff's first cause of action thus seeks damages of at least \$90,496 (\$7,823 + \$53,469 + \$4,204 + \$25,000) (Complaint ¶¶ 4-5.)

b. In his second cause of action (penalties), Plaintiff alleges that Perot Systems failed to pay wages due under Labor Code sections 203 and 226.7 and that Plaintiff is entitled to penalties of approximately \$5,484 (Complaint ¶ 7.);

c. In his third cause of action (retaliation), Plaintiff alleges that Perot Systems terminated Plaintiff in retaliation for his complaints about unpaid wages. (Complaint ¶ 12.) Plaintiff does not specify the amount of damages sought under this cause of action, but Plaintiff alleges that he suffered harm, including lost compensation, injury to property, humiliation, embarrassment and mental anguish (Complaint ¶ 13.);

d. Plaintiff prays for compensatory damages, interest, penalties, attorneys' fees and costs incurred. (Complaint, Prayer for Relief.).

10. In determining whether the amount in controversy exceeds \$75,000, the Court must presume Plaintiff will prevail on each and every one of his claims. *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002), citing *Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1096 (11th Cir. 1994) (the amount in controversy analysis presumes that "plaintiff prevails on liability"). The amount in controversy may include general and special compensatory damages and attorneys' fees that are recoverable by statute. *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998).

11. The amount in controversy in this action exceeds \$75,000 because Plaintiff, according to his Complaint, seeks specified compensatory damages of \$95,980 (\$90,496 (first cause of action) + \$5,484 (second cause of action)) in addition to unspecified damages for lost compensation, injury to property, humiliation, embarrassment and mental anguish (third

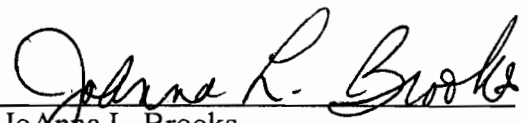
1 cause of action), which must be included in the amount in controversy, as well as unspecified
2 interest, fees, and costs (Complaint ¶¶ 4,7,13 and Prayer for Relief.)

3 **WHEREFORE**, Perot Systems removes the above-entitled action now pending in the
4 Superior Court of the State of California for the County of Santa Cruz to this Court.

5
6 Dated: June 19, 2008

JACKSON LEWIS LLP

7
8
9 By:


JoAnna L. Brooks
Timothy C. Travelstead
Douglas M. Bria
Attorney for Defendant
PEROT SYSTEMS CORPORATION,
a Delaware Corporation

CERTIFICATE OF SERVICE

I, Linda Moore, declare that I am employed with the law firm of Jackson Lewis LLP, whose address is 199 Fremont Street, 10th Floor, San Francisco, California 94105; I am over the age of eighteen (18) years and am not a party to this action.

On June 24, 2008, I served the attached document(s):

NOTICE OF REMOVAL OF CIVIL ACTION TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA PURSUANT TO 28 U.S.C. SECTIONS 1332, 1441 AND 1446 [DIVERSITY]

in this action by placing true and correct copies thereof, enclosed in sealed envelope(s) addressed as follows:

Frank A. Jelinch, Esq.
Law Office of Frank A. Jelinch
20045 Stevens Creek Boulevard, Suite 2G
Cupertino, CA 95014
Telephone: (408) 366-6300
Facsimile: (408) 252-3936

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I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on June 24, 2008 at San Francisco, California.


LINDA A. MOORE

JOANNA L. BROOKS (State Bar #182986)
TIMOTHY C. TRAVELSTEAD (State Bar #215260)
DOUGLAS M. BRIA (State Bar #226966)
JACKSON LEWIS LLP
199 Fremont Street, 10th Floor
San Francisco, CA 94105
Telephone 415.394.9400
Facsimile: 415.394.9401
brooks@jacksonlewis.com

Attorneys for Defendant
PEROT SYSTEMS CORPORATION

ORIGINAL
FILED

JUN 24 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CV 08

MHP
3064

RAUL MANCERA,

Plaintiff,

v.

PEROT SYSTEMS CORPORATION, and
DOES 1 through 25, inclusive,

Defendants.

Case No.:

INDEX OF EXHIBITS IN SUPPORT
OF NOTICE OF REMOVAL OF CIVIL
ACTION TO THE UNITED STATES
DISTRICT COURT FOR THE
NORTHERN DISTRICT OF
CALIFORNIA PURSUANT TO 28
U.S.C. SECTIONS 1332, 1441 AND 1446
[DIVERSITY]

(Filed in conjunction with Certificate of
Service of Notice to Adverse Parties and
Notice of Pendency of Other Action or
Proceeding)

Exhibit A:

True and correct copies of Summons and Complaint, as well as the collective notices and orders, as follows:

1. A true and correct copy of the Complaint for Unpaid Wages and Penalties, filed on April 29, 2008;
2. A true and correct copy of the Summons on Complaint filed on April 29, 2008;
3. A true and correct copy of the Proof of Service of Summons and Complaint, dated May 28, 2008;
4. A true and correct copy of the Case Management Information and Setting form and ADR Information Package, filed on April 29, 2008; and
5. A true and correct copy of the Answer to Complaint, filed on June 23, 2008.

1 Exhibit B:

2 A true and correct copy of the Notice to Adverse Parties of Removal to Federal Court,
3 which will be filed in the Superior Court of California, County of Santa Cruz.

4
5 Dated: June 24, 2008

6 JACKSON LEWIS LLP

7
8 By: 

9 JoAnna L. Brooks
10 Timothy C. Travelstead
11 Douglas M. Bria
12 Attorney for Defendant
13 PEROT SYSTEMS CORPORATION,
14 a Delaware Corporation
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CERTIFICATE OF SERVICE

I, Marianne Solano, declare that I am employed with the law firm of Jackson Lewis LLP, whose address is 199 Fremont Street, 10th Floor, San Francisco, California 94105; I am over the age of eighteen (18) years and am not a party to this action.

On June 24, 2008, I served the attached document(s):

INDEX OF EXHIBITS IN SUPPORT OF NOTICE OF REMOVAL OF CIVIL ACTION TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA PURSUANT TO 28 U.S.C. SECTIONS 1332, 1441 AND 1446 [CAFA DIVERSITY]

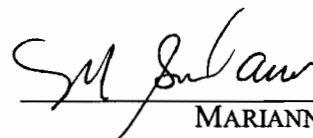
(Filed in conjunction with Certificate of Service of Notice to Adverse Parties and Notice of Pendency of Other Action or Proceeding) in this action by placing true and correct copies thereof, enclosed in sealed envelope(s) addressed as follows:

Frank A. Jelinch, Esq.
Law Office of Frank A. Jelinch
20045 Stevens Creek Boulevard, Suite 2G
Cupertino, CA 95014
Telephone: (408) 366-6300
Facsimile: (408) 252-3936

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I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on June 24, 2008 at San Francisco, California.



MARIANNE SOLANO

EXHIBIT A

EXHIBIT 1

1 FRANK A. JELINCH, ESQ. - SBN 42890
2 LAW OFFICE OF FRANK A. JELINCH
20045 Stevens Creek Boulevard, Suite 2G
3 Cupertino, CA 95014
Tel.: 408-366-6300
Fax: 408-252-3936

4
5 Attorney for Plaintiff

FILED

APR 29 2008

ALEX CALVO, CLERK
BY JENNIFER SAMBRAILO
DEPUTY, SANTA CRUZ COUNTY

6
7
8 SUPERIOR COURT OF CALIFORNIA, SANTA CRUZ COUNTY

9
10 RAUL MANCERA

CASE NO.: CV 160155

11 Plaintiff,

COMPLAINT FOR UNPAID WAGES
AND PENALTIES

12 PEROT SYSTEMS CORPORATION and
13 DOES 1 through 25, inclusive,

(Labor Code Sections 201, 202, 203,
218.5, and 226.7)

14 Defendants.

15
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17 PLAINTIFF ALLEGES:

18 FIRST CAUSE OF ACTION
19 (Non-Payment of Wages)

- 20 1. The defendant, PEROT SYSTEMS CORPORATION, is and at all times relevant herein,
21 was a corporation organized under the laws of California and doing business in Santa
22 Cruz County, California.
- 23 2. Does 1 through 25, inclusive are sued as fictitious defendants. It is believed that each of
24 the Does was in some way responsible for the damages claimed herein.
- 25 3. Beginning on January 8, 2003 and ending on December 30, 2007, plaintiff Raul Mancera
26 was employed by defendant as a Desk Site Support Analyst.
- 27 4. During the period of the employment, the defendant employer did not pay the plaintiff
28 wages as follows:

- a) He was required by defendants to work during meal and rest periods in violation of Labor Code Section 226.7 for 3 years, ending October 24, 2007, for an approximate amount owed of \$7,823.
- b) He was required by defendants to work overtime in excess of 8 hours per day or 40 hours per week without regular or overtime pay for 3 years, ending October 14, 2007, for an approximate amount owed of \$53,469.
- (c) He was not paid for regular hours worked for 23 days in August 2007 for an approximate amount owed of \$4,204.

5. At the time of their termination the defendants failed to pay the plaintiffs wages due them. Failure to pay the wages due violates Labor Code Sections 201, 202, 203, 226.7. There is now due and owing to plaintiffs a sum in excess of \$25,000. Defendant refuses to pay the amount due.

**SECOND CAUSE OF ACTION
(PENALTIES, LABOR CODE 203 AND 226.7
AS TO ALL PLAINTIFFS)**

- 6. Plaintiffs incorporate Paragraph 1-5.
- 7. The defendant's failure to pay wages due violates Labor Code Sections 203 and 226.7, providing for penalties of one hour per pay for each day that rest and meal periods were not provided and for up to 30 days pay from time wages were due and not paid in an approximate amount owed of \$5,484.
- 8. The defendants have failed to pay wages due for a period in excess of 30 days and such failure was willful.

**THIRD CAUSE OF ACTION
(Retaliation for Complaint About Unpaid Wages, Labor Code § 201)**

- 9. Plaintiffs incorporate the allegations of Paragraphs 1-8.
- 10. Beginning when Louis Aquino became plaintiff's supervisor, Raul Mancera complained to his employer about hours worked which were not accounted for in his paycheck (sometimes 2-3 or more hours bi-weekly). Mr. Aquino told him that if he did not like it, he could resign.


11. Labor Code Sections 201, 202, 203 and 226.7 require payment of wages due.
12. Defendant employer terminated plaintiff as a result of his complaints for unpaid wages.
13. As a proximate result of the conduct of the defendants, the plaintiff has suffered harm, including lost compensation, injury to property, humiliation, embarrassment and mental anguish all to his damages in an amount according to proof.

WHEREFORE, plaintiffs, and each of them, pay for judgment against defendants as follows:

1. Compensatory damages in excess of \$25,000 and according to proof;
2. Interest at the rate of 10% from the date wages were owed;
3. For penalties under Labor Code Sections 203 and 226.7;
4. For reasonable attorney's fees according to law, including Labor Code Section 218.5;
5. For costs of suit herein; and
6. For such other relief as the court deem proper.

LAW OFFICE OF FRANK A. JELINCH

DATED: APRIL 25, 2008


Frank A. Jelinch, Attorney for Plaintiff

PROOF OF SERVICE

EXHIBIT 2

SU MONS
(CITACION JUDICIAL)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):
Perot Systems Corporation and Does 1-25, inclusive

YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):
Raul Mancera

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED

APR 29 2008

ALEX CALVO, CLERK
BY JENNIFER SAMBRAILO
DEPUTY, SANTA CRUZ COUNTY

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of Santa Cruz
701 Ocean Street, Room 110

CASE NUMBER:
(Número del Caso): **CV 160155**

Santa Cruz, CA 95060

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
FRANK A. JELINCH, ESQ. SBN 42890 408-366-6300 408-252-3936
LAW OFFICE OF FRANK A. JELINCH
20045 STEVENS CREEK BLVD., #2G
CUPERTINO, CA 95014

DATE: April 29, 2008

(Fecha)

ALEX CALVO

Clerk, by
(Secretario)

JENNIFER SAMBRAILO

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): **PEROT SYSTEMS CORPORATION**

- | | | |
|---|---|--------------------------------|
| under <input checked="" type="checkbox"/> | CCP 416.10 (corporation) | CCP 416.60 (minor) |
| | CCP 416.20 (defunct corporation) | CCP 416.70 (conservatee) |
| | CCP 416.40 (association or partnership) | CCP 416.90 (authorized person) |
| | other (specify): | |

4. by personal delivery on (date):

(SEAL)

EXHIBIT 3

EXHIBIT 4

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CRUZ Santa Cruz Branch 701 Ocean Street, Room 110 Santa Cruz, CA 95060		For Court Use Only FILED APR 23 2008 ALEX CALVO, CLERK BY JENNIFER SAMBRALLO DEPUTY, SANTA CRUZ COUNTY
Watsonville Branch 1 Second Street, Room 300 Watsonville, CA 95076		
PLAINTIFF: RAUL MANCERA DEFENDANT: PEROT SYSTEMS CORPORATION		
CASE MANAGEMENT INFORMATION AND SETTING		CASE NO: CISCV160155

This case is in Santa Cruz County's Case Management Program. It is the Duty of each party to be familiar with the California rules of court and the date, time and place of the first case management conference.

This notice must be served with the summons on all defendants and cross-defendants. Notice of any other pending case management conference must be served on subsequently named defendants and cross-defendants.

ATTENTION DEFENDANT: YOU HAVE 30 DAYS AFTER THE SUMMONS IS SERVED ON YOU TO FILE A RESPONSE TO THE COMPLAINT. THE DATE BELOW DOES NOT EXTEND THE TIME TO FILE A RESPONSE. SEE THE SUMMONS FOR INSTRUCTIONS FOR RESPONDING TO THE SUMMONS AND COMPLAINT.

The first Case Management Conference hearing date is:		
Date: 08/27/08	Time: 8:29	Department No.: 4
Address of the Court: <input checked="" type="checkbox"/> 701 Ocean Street, Santa Cruz, California <input type="checkbox"/> 1 Second Street, Watsonville, California		

Telephonic court appearances are provided through CourtCall to the court. To make arrangements to appear at the Case Management Conference by telephone, please call the program administrator for CourtCall at (310) 572-4670 or (888) 882-6878 at least five (5) court days prior to the hearing. DO NOT CALL THE COURT.

THE LAWYER'S PLEDGE

In order to raise the standards of civility and professionalism among counsel and between the Bench and the Bar, I hereby pledge the following:

1. To at all times comply with the California Rules of Professional Conduct;
2. To honor all commitments;
3. To be candid in all dealings with the court and counsel;
4. To uphold the integrity of our system of justice and not compromise personal integrity for the sake of a client, case or cause;
5. To seek to accomplish the client's legitimate goals by the most efficient and economical methods possible;
6. To act in a professional manner at all times, to be guided by a fundamental sense of fair play in all dealings with counsel and the court, and to be courteous and respectful to the court;
7. To be on time;
8. To be prepared for all court appearances - to be familiar with all applicable court rules;
9. To adhere to the time deadlines set by statute, rule, or order;
10. To avoid visual displays of pique in response to rulings by the court;
11. To discourage and decline to participate in litigation or tactics that are without merit or are designed primarily to harass or drain the financial resources of the opposing party;
12. To avoid any communications with the judge concerning a pending case unless the opposing party or lawyer is present, or unless permitted by court rules or otherwise authorized by law;
13. To refrain from impugning the integrity of the judicial system, its proceedings, or its members;
14. To treat all court personnel with the utmost civility and professionalism;
15. To remember that conflicts with opposing counsel are professional and not personal - vigorous advocacy is not inconsistent with professional courtesy;
16. To refrain from derogatory statements or discriminatory conduct on the basis of race, religion, gender, sexual orientation or other personal characteristic;
17. To treat adverse witnesses and litigants with fairness and due consideration;
18. To conduct discovery proceedings as if a judicial officer were present;
19. To meet and confer with opposing counsel in a genuine attempt to resolve procedural and discovery matters;
20. To not use discovery to harass the opposition or for any other improper purpose;
21. To not arbitrarily or unreasonably withhold consent to a just and reasonable request for cooperation or accommodation;
22. To not attribute to an opponent a position not clearly taken by that opponent;
23. To avoid unnecessary "confirming" letters and to be scrupulously accurate when making any written confirmation of conversations or events;
24. To not propose any stipulation in the presence of the trier of fact unless previously agreed to by the opponent;
25. To not interrupt the opponent's legal argument;
26. To address opposing counsel, when in court, only through the court;
27. To not seek sanctions against or disqualification of another lawyer to attain a tactical advantage or for any other improper purpose;
28. To not schedule the service of papers to deliberately inconvenience opposing counsel;
29. To refrain, except in extraordinary circumstances, from using the fax machine to demand immediate responses for opposing counsel.

ADR INFORMATION PACKAGE

Included in this package:

- Cover Page
- Alternative Dispute Resolution Program Notice
- Local Form SUPCV 1012
(Stipulation and Order to Attend Judicial Mediation or Private Arbitration)

ATTENTION PLAINTIFFS/CROSS-COMPLAINANTS

**PLAINTIFFS SHALL SERVE A COPY OF THIS ADR
INFORMATION PACKAGE ON EACH DEFENDANT
ALONG WITH THE COMPLAINT. CROSS-COMPLAINANTS
SHALL SERVE A COPY OF THIS ADR INFORMATION
PACKAGE ON ANY NEW PARTIES TO THE ACTION
ALONG WITH THE CROSS-COMPLAINT
(CRC 3.221)**

SUPCV-1012 (Rev. 1/07)

Page 1 of 3
Local Rule 7.1.02

**STIPULATION AND ORDER TO ATTEND JUDICIAL MEDIATION
OR PRIVATE ARBITRATION**

**ALTERNATIVE DISPUTE RESOLUTION PROGRAM NOTICE
SANTA CRUZ SUPERIOR COURT
LOCAL RULE 7.1.02(a)**

TO: ALL CIVIL LITIGANTS

**RE: JUDICIAL MEDIATION PROGRAM OF SANTA CRUZ OR OPTION FOR
PRIVATE ARBITRATION**

Alternate Dispute Resolution (ADR) is a process, other than formal litigation, in which a neutral person assists the parties in resolving their dispute. Santa Cruz County's ADR process is Judicial Mediation. If the parties agree to Mediation, it is the policy of this Court to assign appropriate cases to mediation without making a determination of the value of the case.

Appropriate cases will be assigned to Judicial Mediation from the Case Management Conference Calendar. The parties may stipulate to Mediation prior to the Case Management Conference by written stipulation on local form SUPCV 1012. Case Management Conference Statements and requests for continuances should be submitted at least ten days in advance of the hearing.

FOR MORE INFORMATION REGARDING SANTA CRUZ COUNTY'S MEDIATION PROGRAM, SEE LOCAL RULE 7.1 OR CONTACT THE CIVIL CALENDAR DEPARTMENT (SANTA CRUZ) AT (831) 454-2303 OR THE WATSONVILLE BRANCH AT (831) 763-8069.

You may also stipulate to use a private arbitration or mediation service with the same local form 1012. This local form is required to ensure that the case is tracked properly by Court staff.

SUPCV-1012 (Rev. 1/07)

Page 2 of 3
Local Rule 7.1.02

**STIPULATION AND ORDER TO ATTEND JUDICIAL MEDIATION
OR PRIVATE ARBITRATION**

ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS):		TELEPHONE NO.:	For Court Use Only
ATTORNEY FOR (NAME):			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CRUZ <input type="checkbox"/> Santa Cruz <input type="checkbox"/> Watsonville Branch 701 Ocean Street, Room 110 1430 Freedom Boulevard Santa Cruz, CA 95060 Watsonville, CA 95076			
Plaintiff/Petitioner: Defendant/Respondent:			
STIPULATION AND ORDER TO ATTEND JUDICIAL MEDIATION OR PRIVATE ARBITRATION Must be filed 10 days before Case Management Conference			CASE NO.

FOR GOOD CAUSE as stated in the attached supporting declaration,
 CASE MANAGEMENT CONFERENCE CURRENTLY SET FOR: (DATE) _____
 CHECK ONLY ONE BOX:

1. () The parties stipulate to court ordered mediation.
2. () The parties stipulate to private mediation or arbitration, to be arranged by the parties and completed within 120 days of the current CMC date stated above. The parties agree that such process shall be a good faith attempt to resolve the case.

SIGNATURES OF COUNSEL:

_____	TYPE NAME: _____
DATE: _____	ATTORNEY FOR: _____
_____	TYPE NAME: _____
DATE: _____	ATTORNEY FOR: _____

☐ ADDITIONAL SIGNATURES IN ATTACHMENT 'A'

ORDER

**BASED ON THE STIPULATION OF THE PARTIES, THE SUPPORTING DECLARATION,
AND FINDING GOOD CAUSE, THE APPLICATION IS HEREBY GRANTED**

<input type="checkbox"/> SET FOR JUDICIAL MEDIATION ON: _____	AT: _____ a.m./p.m.
<input type="checkbox"/> VACATE CMC CURRENTLY SET FOR: _____	AT: _____ a.m./p.m.

Date: _____

 JUDGE OF THE SUPERIOR COURT

SUPCV-1012 (Rev. 1/07)

Page 3 of 3
 Local Rule 7.1.02

**STIPULATION AND ORDER TO ATTEND JUDICIAL MEDIATION
OR PRIVATE ARBITRATION**

EXHIBIT 5

Jun 23 2008 9:03PM
06/23/2008 16:25 One Legal LLC

831-443-6764
(FAX)831 855 3441

P.11
P.008/008

1 JOANNA L. BROOKS (State Bar #132986)
2 TIMOTHY C. TRAVELSTEAD (State Bar #215260)
3 DOUGLAS M. BRJA (State Bar #226966)
4 JACKSON LEWIS LLP
5 199 Fremont Street, 10th Floor
6 San Francisco, CA 94105
7 Telephone 415.394.9400
8 Facsimile: 415.394.9401

9 Attorneys for Defendant
10 PEROT SYSTEMS CORPORATION

FILED
JUN 23 2008

ALEX CALVO, CLERK
BY DEBORAH ROJAS
DEPUTY, SANTA CRUZ COUNTY

11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF SANTA CRUZ

13 RAUL MANCERA,

14 Plaintiff,

15 v.

16 PEROT SYSTEMS CORPORATION and
17 DOES 1 through 25, inclusive,
18 Defendants.

Case No. CV160155

BY FAX

**DEFENDANT'S ANSWER TO
PLAINTIFF'S UNVERIFIED
COMPLAINT**

Complaint Filed: April 29, 2008
Trial Date: None Set

19 Defendant PEROT SYSTEMS CORPORATION ("Defendant") hereby answers Plaintiff
20 RAUL MANCERA'S ("Plaintiff") unverified Complaint (the "Complaint"), as follows:

GENERAL DENIAL

21 Pursuant to Code of Civil Procedure section 431.30 subdivision (d), Defendant denies
22 each and every allegation contained in Plaintiff's unverified Complaint and denies that Plaintiff
23 was injured or damaged as alleged, or at all.

AFFIRMATIVE DEFENSES

24 By way of affirmative defenses to the allegations of the Complaint herein, Defendant
25 alleges as follows:

26 ///

27 ///

DEFENDANT'S ANSWER TO PLAINTIFF'S UNVERIFIED COMPLAINT

Case No. CV160155

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

The Complaint, and all causes of action contained therein, fail to state facts sufficient to constitute a cause of action against Defendant.

SECOND AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

Plaintiff is barred from recovering any damages for lost wages, or any recovery for lost wages must be reduced, if and to the extent that Plaintiff failed to exercise reasonable diligence to mitigate his alleged damages, if any.

THIRD AFFIRMATIVE DEFENSE

(Unclean Hands)

Plaintiff is barred from recovery under this Complaint if and to the extent that he comes to this Court with unclean hands.

FOURTH AFFIRMATIVE DEFENSE

(Adequate Legal Remedies)

Any claim for equitable relief is barred, in whole or in part, to the extent Plaintiff has an adequate remedy at law.

FIFTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

The Complaint as a whole, and each purported cause of action alleged therein, is barred in whole or in part by the applicable statutes of limitations, including without limitation Code of Civil Procedure section 338(a) or Code of Civil Procedure sections 340(a) and (b).

SIXTH AFFIRMATIVE DEFENSE

(Waiver)

The Complaint, and each cause of action contained therein, is barred by the doctrine of waiver.

///

///

1 **SEVENTH AFFIRMATIVE DEFENSE**

2 (Good Faith)

3 To the extent Plaintiff seeks statutory penalties, such penalty must be barred or reduced to
4 the extent Defendant acted in good faith and non-willfully.

5 **EIGHTH AFFIRMATIVE DEFENSE**

6 (Estoppel)

7 The Complaint, and each cause of action contained therein, is barred by the doctrine of
8 estoppel.

9 **NINTH AFFIRMATIVE DEFENSE**

10 (Laches)

11 The Complaint, and each cause of action contained therein, is barred by the doctrine of
12 laches.

13 **TENTH AFFIRMATIVE DEFENSE**

14 (Waiver of Meal and Rest Periods)

15 Plaintiff's first cause of action for unpaid wages is barred to the extent Plaintiff seeks
16 wages for unpaid meal and rest periods that Defendant provided but that Plaintiff refused to take
17 in compliance with Defendant's policies and/or or voluntarily waived.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 (Lack of Knowledge)

20 Plaintiff's third cause of action for retaliation is barred to the extent Plaintiff failed to
21 notify Defendant of the alleged wage and hour violations during his employment with Defendant.

22 **TWELFTH AFFIRMATIVE DEFENSE**

23 Any recovery on Plaintiff's Complaint for failure to pay wages is barred because
24 Defendant complied with all applicable provisions of the California Labor Code, the applicable
25 wage orders of the California Industrial Welfare Commission and federal law.

26 **PRAYER**

27 WHEREFORE, Defendant prays for judgment as follows:

- 28 1. That Plaintiff take nothing by way of his Complaint;

2. That the Complaint and each claim for relief be dismissed in its entirety with prejudice;

3. That Plaintiff be denied each and every demand and prayer for relief contained in the Complaint;

4. For costs of suit incurred herein, including reasonable attorney's fees, as and where permitted under California law; and

5. For such other and further relief as the Court deems just and equitable.

Dated: June 23, 2008

JACKSON LEWIS LLP

By: JoAnna L. Brooks
JoAnna L. Brooks
Timothy C. Travelstead
Douglas M. Bria
Attorneys for Defendant
PEROT SYSTEMS CORPORATION,
a Delaware Corporation

PROOF OF SERVICE

I, Mary Stoner, declare that I am employed with the law firm of Jackson Lewis LLP, located at 199 Fremont Street, 10th Floor, San Francisco, California 94105; I am over the age of eighteen (18) years and am not a party to this action.

On June 23, 2008, I served the attached document(s):

DEFENDANT'S ANSWER TO PLAINTIFF'S UNVERIFIED COMPLAINT

in this action by placing true and correct copies thereof, enclosed in sealed envelope(s) addressed as follows:

Frank A. Jelinch, Esq.
Law Office of Frank A. Jelinch
20045 Stevens Creek Boulevard, Suite 2G
Cupertino, CA 95014
Telephone: 408-366-6300
Facsimile: 408-252-3936

☒ **BY MAIL:** United States Postal Service - by placing sealed envelopes with the postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at San Francisco, California.

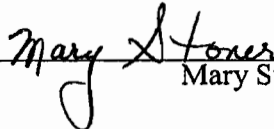
☐ **BY HAND DELIVERY:** I caused such envelope(s) to be delivered by Messenger Service to the above address.

☐ **BY OVERNIGHT DELIVERY:** I caused such envelope(s) to be delivered to the above address within 24 hours by OVERNIGHT EXPRESS service.

☐ **BY FACSIMILE:** I caused such documents to be transmitted by facsimile to the telephone number(s) indicated above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 23, 2008 at San Francisco, California.



Mary Stoner

EXHIBIT B

1 JOANNA L. BROOKS (State Bar #182986)
TIMOTHY C. TRAVELSTEAD (State Bar #215260)
2 DOUGLAS M. BRIA (State Bar #226966)
JACKSON LEWIS LLP
3 199 Fremont Street, 10th Floor
San Francisco, CA 94105
4 Telephone 415.394.9400
Facsimile: 415.394.9401
5

Attorneys for Defendant
6 PEROT SYSTEMS CORPORATION
7

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SANTA CRUZ
10

11 RAUL MANCERA,

12 Plaintiff,

13 v.

14 PEROT SYSTEMS CORPORATION and
DOES 1 through 25, inclusive,

15 Defendants.
16

Case No. CV160155

**NOTICE TO ADVERSE PARTIES OF
REMOVAL TO FEDERAL COURT**

Complaint Filed: April 29, 2008
Trial Date: None Set

17 **TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:**

18 **PLEASE TAKE NOTE THAT** a Notice of Removal of this action was filed in the United
19 States District Court for the Northern District of California on June 24, 2008. A copy of said
20 Notice of Removal is attached to this Notice, and is served and filed herewith.
21

22 Dated: June 24, 2008

JACKSON LEWIS LLP

23
24
25 By:

JoAnna L. Brooks
Timothy C. Travelstead
Douglas M. Bria
Attorneys for Defendant
PEROT SYSTEMS CORPORATION,
a Delaware Corporation
26
27
28

PROOF OF SERVICE

I, Linda A. Moore, declare that I am employed with the law firm of Jackson Lewis LLP, whose address is 199 Fremont Street, 10th Floor, San Francisco, California 94105; I am over the age of eighteen (18) years and am not a party to this action.

On June 24, 2008, I served the attached document(s):

**NOTICE TO ADVERSE PARTIES OF REMOVAL TO
FEDERAL COURT**

in this action by placing true and correct copies thereof, enclosed in sealed envelope(s) addressed as follows:

Frank A. Jelinch, Esq.
Law Office of Frank A. Jelinch
20045 Stevens Creek Boulevard, Suite 2G *Attorney for Plaintiff*
Cupertino, CA 95014
Telephone: (408) 366-6300
Facsimile: (408) 252-3936

☐ BY MAIL: United States Postal Service by placing sealed envelopes with the postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at San Francisco, California.

☐ BY HAND DELIVERY: I caused such envelope(s) to be delivered by Messenger Service to the above address.

☒ BY OVERNIGHT DELIVERY: I caused such envelope(s) to be delivered to the above address within 24 hours by OVERNIGHT EXPRESS service.

☐ BY FACSIMILE: I caused such documents to be transmitted by facsimile to the telephone number(s) indicated above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 24, 2008 at San Francisco, California.

LINDA A. MOORE